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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/766,866	01/30/2004	Jean-Louis Gueret	118322	3899
25944	7590	05/03/2006	EXAMINER	
<b>OLIFF &amp; BERRIDGE, PLC</b> P.O. BOX 19928 ALEXANDRIA, VA 22320				WALCZAK, DAVID J
ART UNIT		PAPER NUMBER		
3751				

DATE MAILED: 05/03/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/766,866	GUERET, JEAN-LOUIS	
	<b>Examiner</b>	<b>Art Unit</b>	
	David J. Walczak	3751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 20 March 2006.
- 2a) This action is **FINAL**.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-36 is/are pending in the application.
- 4a) Of the above claim(s) 2,3,8,9,17,29 and 30 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1,4-7,10-16,18-28 and 31-36 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
 Paper No(s)/Mail Date \_\_\_\_\_
- 4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Response to Amendment***

It is initially noted that the amendment filed 3/20/06 includes incorrect status identifiers for a number of the claims, i.e., claims 2, 3, 8, 9, 17, 29 and 30 should include the status identifier “withdrawn” (as opposed to “original”) as these claims have been withdrawn from further consideration per the restriction requirement mailed 8/31/05. Any response to this letter should include a new set of claims having the correct status identifiers.

### ***Abstract***

The abstract of the disclosure remains objected to because phrases which can be implied, such as “A device includes” should not be present therein. Correction is required. See MPEP § 608.01(b).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1, 4-7, 10-16, 18-28 and 31-36 remains rejected under 35 U.S.C. 103(a) as being unpatentable over Buckley et al. (hereinafter Buckley) in view of Drozd, Jr.

(hereinafter Drozd). In regard to claim 1, Buckley discloses a device comprised of a flask 10 containing "at least one of a cosmetic and care product" (see column 2, lines 6-7) and having a threaded neck 14 and an applicator having a stem 21', 22' (see Figure 7), an applicator element 12' disposed at the first end of the stem and a closure cap 11 supporting the second end of the stem wherein the cap includes a threaded portion for engagement with the neck 14. Although the Buckley reference does not disclose a ring releasably connected to the threaded portion and arranged to remain secured to the neck during removal of the applicator, attention is directed to the Drozd reference, which discloses another flask and cap arrangement wherein a ring 16a (see Figures 8-10) is releasably connected to the threaded portion of the cap 12 and will remain secured to the neck of the flask when the cap is removed in order to enable a user to determine whether or not the cap has been previously removed. Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the structure of the flask neck and ring taught by Drozd onto the Buckley device in order to enable a user to determine whether or not the device has previously been open. In regard to claim 4, the ring has a first portion 52 in relief that enables the ring to be snap-fastened onto a second portion 54 in relief on the neck (see column 7, lines 12-18). In regard to claim 5, the second portion in relief includes an annular bead 54 and the first portion in relief comprises teeth 52. In regard to claim 6, the ring and cap disclosed by Drozd are formed by molding plastic (as evidenced by the cross-hatching used in the drawings and column 4, lines 36-39). In regard to claim 7, the ring is connected to the threaded portion by a breakable bridge 14a. In regard to claims 10-12 and 16, the neck

includes a first anti-rotation device 44a in the form of a ramp and the ring includes a second anti-rotation device 28a in the form of a ramp wherein the anti-rotation devices operate as claimed (see column 7, lines 18-24 and column 6, lines 3-29). In regard to claim 13, the neck in the Buckley device includes a base having a cylindrical surface (located below the threads). In regard to claim 15, the flask in the Buckley device has a shoulder at the base of the neck. In regard to claims 18 and 19, the flask in the Buckley device can be made from glass or plastic (see column 1, lines 48-52). In regard to claims 20-22, 24, 25, 27 and 28, although the Buckley reference does not disclose the capacity of the flask or the dimensions of the neck, stem and applicator brush 12', at the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to design the flask to have the claimed capacity and the neck, stem and applicator to have the claimed dimensions, depending on the needs of the user. In regard to claim 23, the stem is visible when the applicator is withdrawn and viewed as claimed (see Figure 7). In regard to claim 26, the flask contains a substance to be applied to nails (see column 2, lines 3-7). In regard to claims 31-36 the method as claimed is inherent in the operation of the device discussed supra.

#### ***Response to Arguments***

Applicant's arguments filed 3/20/06 have been fully considered but they are not persuasive.

In regard to the abstract, the Applicant contends that the phrase "A device includes" cannot be implied and the deletion of this phrase would render the language

grammatically incorrect. This phrase, however, is considered to be implicit (and thereby improper) in that a person reading the document would certain realize that a "device" (of some sort) is being described. The first line of the abstract could be amended to read "A flask having a threaded neck and an applicator." wherein such language is grammatically correct and does not contain language that can be implied.

In regard to the art rejection, the Applicant contends that there is no motivation to combine the Buckley and Drozd references since a person developing a package for cosmetics would be concerned with aesthetics and evidence of tampering would not be a concern. These positions, however, are merely speculation, i.e. one can also be of the opinion that a producer of cosmetic packages would be more concerned with tampering than aesthetics. For example, a producer of such cosmetic containers may be concerned with vandalism and not want the product contained in the containers to be contaminated by some criminal element. Further, a conscientious consumer may be more concerned with tampering than aesthetics and would rather purchase cosmetic containers with such tamper-proof mechanisms than without. The examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art.

See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, one of ordinary skill in the container arts would readily recognize that tamper proof rings (such as those disclosed

by Drozd) can be applied to any type of container having a screw cap should the user of said container be concerned with tampering. The addition of such a ring certainly would not effect the operation of the Buckley device and the Drozd reference in no way limits the container type to which the tamper-proof ring may be applied.

In response to Applicant's further argument that the examiner's combination of Buckley and Drozd is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). As the claimed ring is well-known and often employed on containers having screw caps and cosmetic containers are commonly employed with screw caps, one would readily realize that such a ring may be applied to a cosmetic container without having knowledge of the Applicant's invention.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

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mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David J. Walczak whose telephone number is 571-272-4895. The examiner can normally be reached on Mon-Thurs, 6:30- 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on 571-272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



David J. Walczak  
Primary Examiner  
Art Unit 3751

DJW  
4/29/06